

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	No. 1:CR-04-301
	:	
v.	:	(JUDGE CONNER)
	:	
ARTHUR GARCIA	:	(ELECTRONICALLY FILED)

**ADDENDUM TO DEFENDANT’S
RESENTENCING MEMORANDUM**

II. CASE LAW

A Fourth Circuit case recently located by the defense contains several circumstances similar to those present in Mr. Garcia’s case. In the case of *United States v. DeBeir* the District Court downwardly departed three levels, but the Fourth Circuit deemed the joint grounds for departure found by the United States District Court for the District of Maryland to be less than extraordinary and, therefore, the case was remanded for resentencing. *United States v. DeBeir*, 186 F.3d 561, 574 (1999). The Fourth Circuit stated “We find nothing extraordinary about the particular factual landscape of this case” *DeBeir*, 186 F.3d at 573. The Fourth Circuit found *DeBeir* to be “An intelligent and well educated adult . . . a 58 year old male (who) contacted . . . a 14-year-old girl, through an internet chat room . . . (and) exchanged numerous sexually explicit e-mail communications, during which he encouraged her

to keep their conversation and planned rendezvous a secret because, if exposed, he ‘could be in big trouble with the law’.” *DeBeir*, 186 F.3d at 564.

The Fourth Circuit also found the following pertinent facts:

He explained “if a man my age is caught in a motel room together with a 14-year old girl . . . I’ll go to jail for many years . . . even at age 14, I’m sure you’re smart enough to know that,” and noted that he had more to lose than Kathy if they were discovered because he “would go to jail for a LONG time” . . .

Throughout these conversations, DeBeir discussed meeting Kathy so that he could teach her about oral sex. He explained that he would pay her \$150 for each visit . . . DeBeir repeatedly urged Kathy to follow through on her commitment to meet him, and stressed the importance of making it easy for him to pick her out of a crowd when they were to meet . . .

DeBeir confirmed his meeting with Kathy over the internet and then traveled from New York to Baltimore; he arrived at the mall to meet Kathy as scheduled . . .

The FBI later found a transcript of the e-mail conversations with Kathy and similar transcripts from conversations with other purported teenage girls in DeBeir’s car and at his home. The conversations began in the summer of 1997 and continued through May 1998.

DeBeir, 186 F.3d at 564-65.

CORRECTION

Page 12.

The first sentence on page 12 of the Defendant's Resentencing Memorandum should read as follows: "The Ninth [not the Third] Circuit went on to state the following: "Even if reasonable minds could differ, we cannot say that the district court abused its discretion in determining that Parish's offense conduct was outside the heartland. *Parish*, 308 F.3d at 1030."

Respectfully submitted,

s/ Gerald A. Lord

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CERTIFICATE OF SERVICE

I hereby certify that I served the Addendum To Defendant's Resentencing Memorandum on opposing counsel by causing a copy to be electronically filed and by first class mail to Arthur Garcia At the Perry County Prison, PO Box 420, New Bloomfield, PA 17068.

Respectfully submitted,

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Dated: September 6, 2007